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7 WALGREEN PHARMACY SERVICES
MIDWEST, LLC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11 | DULCE SOLIS, an individual

Plaintiff,

V.

14 WALGREEN CO. D/B/A
15 WALGREEN PHARMACY BOOTS
16 ALLIANCE, a corporate entity for
unknown; and DOES 1-50, inclusive.

Defendants.

Case No. 2:22-CV-09016

**DEFENDANT WALGREEN
PHARMACY SERVICES MIDWEST,
LLC'S NOTICE OF REMOVAL OF
CIVIL ACTION TO UNITED
STATES DISTRICT COURT**

[Filed concurrently with Civil Cover Sheet; Declaration of Joseph Amsbary in Support of Removal; Declaration of Christina Paulausky in Support of Removal; Certification of Interested Parties and Disclosure Statement; and Notice of Related Cases]

Complaint Filed: November 10, 2022

Trial Date: None

District Judge: Hon.

Magistrate Judge: Hon. Courtroom _____
Courtroom: Courtroom _____

1 **TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL
2 DISTRICT OF CALIFORNIA AND TO PLAINTIFF DULCE SOLIS AND
3 HER ATTORNEYS OF RECORD:**

4 PLEASE TAKE NOTICE THAT defendant Walgreen Pharmacy Services
5 Midwest, LLC (“Defendant” or “Walgreen Pharmacy”), by and through the
6 undersigned counsel, hereby removes the above-entitled action from the Superior
7 Court of the State of California for the County of Los Angeles to the United States
8 District Court for the Central District of California pursuant to 28 U.S.C. Sections
9 1332 and 1441(b) on the grounds that there is complete diversity of citizenship
10 between Plaintiff Dulce Solis (“Plaintiff” or “Solis”), a citizen of the State of
11 California, and Defendant, a citizen of the State of Illinois; that the amount in
12 controversy exceeds the jurisdictional minimum of \$75,000 set forth in section
13 1332(a); and that the foregoing facts were true at the time the Complaint in this
14 matter was filed and remain true as of the date of the filing of this Notice of
15 Removal, as more fully set forth below on the following grounds:

16 **Timeliness of Removal**

17 1. On or about November 10, 2022, Plaintiff filed an action against
18 Defendant entitled “Dulce Solis, an individual, Plaintiff vs. Walgreen Pharmacy
19 Midwest, LLC, and DOES 1 through 20 inclusive, Defendants,” in the Superior
20 Court of the State of California, County of Los Angeles; Case Number
21 22STCV35792. Attached hereto as “**Exhibit 1**” is a true and correct copy of the
22 Summons and Complaint (“Complaint”), as well as documents accompanying the
23 Summons and Complaint that were served on Defendant.

24 1. The Complaint alleges claims for: (1) Violation of Government Code §
25 12940(a), Mental Disability Discrimination; (2) Violation of Government Code §
26 12940(m), Failure to Accommodate Mental Disability; (3) Violation of Government
27 Code § 12940(n), Failure to Engage in Interactive Process; (4) Violation of
28 Government Code § 12940(h), Retaliation; (5) Violation of Government Code §

1 12945(a), California Family Rights Act; and (6) Wrongful Termination in Violation
2 of Public Policy. *See* Complaint.

3 2. On December 6, 2022, Defendant filed and served its Answer to the
4 Complaint in the Superior Court of the State of California, County of Los Angeles. A
5 true and correct copy of Defendant's Answer is attached hereto as "**Exhibit 2.**"
6 Defendant will file a conformed copy of the Answer with the Court upon receipt.

7 3. Attached as "**Exhibit 3**" is a true and correct copy of the Notice of
8 Service of Process, showing that the Summons, Complaint, Civil Case Cover Sheet
9 and other documents were served on Defendant on November 15, 2022.

10 4. Exhibits 1 through 3 to this Notice of Removal constitute all pleadings,
11 process and orders served in this action at the time of removal.

12 5. This Notice of Removal is being filed within thirty (30) days after service
13 on this Defendant of the initial pleading setting forth the claims for relief upon which
14 Plaintiff's action is based. Therefore, this Notice is timely filed under 28 U.S.C. §
15 1446(b).

16 7. The Complaint also names as defendants "DOES 1 through 20."
17 Defendant is informed and believe and on that basis allege that none of the
18 fictitiously-named defendants have been served with a copy of the Summons and
19 Complaint. Therefore, the fictitiously-named defendants are not parties to the above-
20 captioned action and need not consent to removal. *See* 28 U.S.C. § 1441(b)(1);
21 *Fristoe v. Reynolds Metals Co.*, 615 F.2d 1209, 1213 (9th Cir. 1980) ("Does"
22 defendants need not be joined in a removal petition).

23 **Diversity Jurisdiction Lies Over This Action**

24 8. This is a civil action of which this Court has original diversity
25 jurisdiction under 28 U.S.C. section 1332, and is properly removable pursuant to the
26 provisions of 28 U.S.C. sections 1441(a) and (b), because it is a civil action in which
27 the amount in controversy exceeds the sum of \$75,000, exclusive of costs and
28 interest, and is between citizens of different states, as set forth below.

1 **Complete Diversity Of Citizenship Exists Between Plaintiff And Defendant**

2 9. Plaintiff's Citizenship. Complete diversity of citizenship exists in this
 3 action. For diversity purposes, the citizenship of a natural person is determined by
 4 his/her state of domicile. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th
 5 Cir. 2001). Plaintiff is a citizen of Los Angeles County, State of California (Ex. 1,
 6 Complaint ¶1.)

7 10. Walgreen Pharmacy's Citizenship. Pursuant to 28 U.S.C.
 8 section 1332(c), “a corporation shall be deemed to be a citizen of every State and
 9 foreign state by which it has been incorporated and of the State or foreign state
 10 where it has its principal place of business.” *See* 28 U.S.C. § 1332(c). For the
 11 reasons set forth below, Walgreen Pharmacy is not now, and was not at the time of
 12 the filing of the State Action, a citizen of the State of California. (**Exhibit 4**, Joseph
 13 B. Amsbary Decl. ¶¶ 2, 3.)

14 11. Walgreen Pharmacy is now, and ever since this action commenced, has
 15 been formed under the laws of the State of Illinois, with its principal place of
 16 business in Illinois. (Ex. 4 Joseph B. Amsbary Decl. ¶ 3.) Under the “nerve center
 17 test,” a principal place of business refers to “the place where a corporation’s officers
 18 direct, control, and coordinate the corporation’s activities.” *See Hertz Corp. v.*
 19 *Friend*, 559 U.S. 77, 92-93 (2010) (“principal place of business” means “the place
 20 where a corporation’s officers direct, control, and coordinate the corporation’s
 21 activities.”). Because Walgreen Pharmacy’s corporate headquarters and executive
 22 offices are located in Deerfield, Illinois where its high level officers direct, control,
 23 and coordinate the Company’s activities, Walgreen Pharmacy’s principal place of
 24 business or “nerve center” is in Deerfield, Illinois. (Ex. 4, Joseph B. Amsbary Decl.
 25 ¶ 3.) Accordingly, Walgreen Pharmacy is, and has been at all times since this action
 26 commenced, a citizen of the State of Illinois. As a result, Walgreen Pharmacy is not
 27 now, and was not at the time of the filing of the State Action, a citizen of the State of
 28 California for removal purposes.

1 12. Does' Citizenship. Pursuant to 28 U.S.C. section 1441(b)(1), the
2 citizenship of defendants sued under fictitious names shall be disregarded for
3 purposes of establishing removal jurisdiction under 28 U.S.C. section 1332. *See*
4 28 U.S.C. § 1441(b)(1); *Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 690-691 (9th
5 Cir. 1998) (in determining whether diversity of citizenship exists, only the named
6 defendants are considered). Thus, the existence of Doe Defendants 1-10, does not
7 deprive this Court of jurisdiction.

8 13. Accordingly, complete diversity of citizenship exists between Plaintiff
9 and Defendant.

The Alleged Amount In Controversy Exceeds \$75,000

11 14. While Defendant denies any liability as to Plaintiff's claims, the amount
12 in controversy in this action exceeds the sum of \$75,000. Plaintiff alleges, *inter alia*,
13 that during her employment as Pharmacy Technician at Walgreen Pharmacy in Long
14 Beach, Walgreen Pharmacy discriminated and retaliated against her on the basis of
15 her alleged mental disability, failed to accommodate Plaintiff's disability, failed to
16 engage in the interactive process, violated the California Family Rights Act and
17 wrongfully terminated her (Ex. 1, Compl., ¶ 1-77.).

18 15. To satisfy the amount in controversy of \$75,000, exclusive of interest
19 and costs, is not “daunting,” as courts in this Circuit recognize that a removing
20 defendant is not obligated to “research, state and prove the plaintiff’s claim for
21 damages.” *Muniz v. Pilot Travel Centers LLC*, 2007 U.S. Dis. LEXIS 31515, *7
22 (E.D. Cal., April 30, 2007). Defendant needs only “provide evidence establishing
23 that it is ‘more likely than not’ that the amount in controversy exceeds” \$75,000.
24 *Guglielmino v. McKee Foods Corp.*, 56 F.3d 696, 699 (9th Cir. 2007). Thus, “[o]nce
25 the proponent of jurisdiction has set out the amount in controversy, only a ‘legal
26 certainty’ that the judgment will be less forecloses federal jurisdiction.” *Brill v.*
27 *Countrywide Home Loans, Inc.*, 427 F.3d 446, 447 (7th Cir. 2005).

28 16. The amount in controversy is determined from the allegations or prayer

1 of the complaint. *See St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283,
 2 289 (1938) (inability to recover an amount adequate to give court jurisdiction does
 3 not show bad faith or out of court of jurisdiction). If the complaint does not, on its face,
 4 reflect the amount in controversy, the Court may consider facts from the removal
 5 petition, as well as evidence submitted by the parties, relevant to the amount in
 6 controversy at the time of removal. *Singer v. State Farm Mut. Auto. Ins. Co.*, 116
 7 F.3d 373, 377 (9th Cir. 1997).

8 17. Plaintiff alleges she was terminated by Walgreen Pharmacy on or about
 9 January 6, 2022 when she was on unpaid maternity leave. (Ex. 1, Compl., ¶ 18.)
 10 Plaintiff claims that as a result, she suffered actual, consequential, and incidental
 11 damages, including but not limited to, loss of earnings and future earning capacity,
 12 and other pecuniary loss. She also alleges that she suffered substantial losses in
 13 earnings and job benefits. She further alleges that she suffered loss of earnings, past
 14 and future, loss of reputation, goodwill and standing in the industry in which Plaintiff
 15 has worked, resulting in the loss or diminution of employment-related opportunities,
 16 other employment benefits, and job opportunities, all in an amount subject to proof at
 17 trial. (Ex. 1, Compl., ¶¶ 33, 40, 49, 55, 76, and Prayer for Relief ¶ 78.a.)

18 18. At the time of Plaintiff's termination, Plaintiff's rate of pay was \$26.18
 19 per hour. Her annual salary, even without overtime pay, was approximately
 20 \$54,454.90 (i.e., \$26.18 x 40 x 52). (**Exhibit 5**, Christina Paulausky Decl., ¶2).

21 19. Plaintiff claims she has suffered "emotional distress in an amount
 22 unknown, but according to proof at trial." (Ex. 1, Compl. ¶¶ 31, 40, 49, 55, 74, and
 23 Prayer for Relief ¶ 78.b.) Although Defendant denies any liability to Plaintiff for
 24 embarrassment, humiliation, and mental and emotional distress and discomfort, these
 25 alleged damages must be included when calculating the amount in controversy. *See*
 26 *Ajimatanrareje v. Metro. Life Ins. Co.*, 1999 U.S. Dist. LEXIS 7339, *4 (N.D. Cal.
 27 1999) (emotional distress damages "may be considered in the amount in
 28 controversy").

1 20. Plaintiff seeks attorneys' fees. (Ex. 1, Compl., ¶¶ 28, 33, 34, 42, 51, 56,
2 76, 77, Prayer for Relief, ¶ 78.f.) Although Defendant denies any liability to Plaintiff
3 for attorneys' fees, claims for attorneys' fees are properly considered in calculating
4 the amount in controversy for purposes of removal on grounds of diversity
5 jurisdiction. *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998)
6 (claims for statutory attorneys' fees to be included in amount in controversy); *Brady*
7 *v. Mercedes-Benz USA, Inc.*, 243 F.Supp.2d 1004, 1010-11 (N.D. Cal. 2002)
8 (attorneys' fees included in determining jurisdictional amount).

9 21. Plaintiff claims she is entitled to punitive damages. (Ex. 1, Compl.
10 ¶¶ 32, 41, 50, 57, 65, 75, Prayer for Relief ¶ 78.d.). Although Defendant denies any
11 liability to Plaintiff for punitive damages, these damages are included when
12 calculating the amount in controversy. *See Guglielmino v. McKee Foods Corp.*, 506
13 F.3d 696, 700 (9th Cir. 2007) (the “amount-in-controversy requirement excludes
14 only ‘interests and costs.’”).

15 22. Based upon the foregoing, the amount in controversy in this action
16 exceeds the jurisdictional minimum of \$75,000.

17 23. For these reasons, this action is a civil action over which this Court has
18 original jurisdiction pursuant to 28 U.S.C. section 1332, and which may be removed
19 to this Court by Defendant pursuant to 28 U.S.C. section 1441 based on diversity
20 jurisdiction.

Pleadings And Process

22 24. Parties: Defendant brings this Notice of Removal on its own behalf.

23 25. Pleadings: On December 6, 2022, Defendant filed an Answer in the
24 State Action. (*See* Ex. 2.)

25 26. Proper Court: Removal to this Court is proper under 28 U.S.C.
26 section 1441(a) because the Superior Court of California, in and for the County of
27 Los Angeles, is geographically located within this Court's district and division.

28 || 27. Notice: Defendant is serving a copy of this Notice of Removal on all

1 adverse parties and filing a copy with the clerk of the state court pursuant to
2 28 U.S.C. § 1446(d). A true and correct copy of the Notice to Adverse Parties and
3 State Court of Removal, without exhibit, is attached to this Notice as **Exhibit 6**.

4 28. Signature: This Notice of Removal is signed pursuant to Rule 11 of the
5 Federal Rules of Civil Procedure. *See* 28 U.S.C. § 1446(a).

6 29. By removing on the basis of diversity jurisdiction, Defendant does not
7 concede or make any admissions relating to the merit and/or value of Plaintiff's
8 allegations, claims or damages. Defendant denies the material allegations contained
9 in the Complaint, generally and specifically.

10 WHEREFORE, Defendant respectfully requests that the State Action be
11 removed from the state court in which it was filed to the United States District Court,
12 in and for the Central District of California, and further requests that this Honorable
13 Court issue all necessary orders and process and grant such other and further relief as
14 in law and justice that Defendant may be entitled to receive.

15
16 DATED: December 13, 2022

OGLETREE, DEAKINS, NASH, SMOAK &
17 STEWART, P.C.

18
19 By: /s/ Leslie H. Helmer
20 Leslie H. Helmer

21 Attorneys for Defendant
22 WALGREEN PHARMACY SERVICES
23 MIDWEST, LLC

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